

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Randolph and Commissioners Downey, Karlan, Knox, and Swanson

From: Holly B. Armstrong, Commission Counsel
John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Re: Adoption of Proposed Amendments to Regulation 18404.1 – Clarification of Procedures for Seeking Extensions of Time from Executive Director to Terminate Committees

Date: May 19, 2003

Introduction

Regulation 18404.1 provides for the timely termination of campaign committees after the conclusion of state candidates' run for office or term of office.¹ Specifically, it provides for mandatory termination of campaign committees after certain designated intervals that differ depending on whether or not the committee has debt remaining after the campaign. The regulation was adopted in the context of implementing Proposition 34 as a means of eventually eliminating pre-January 1, 2001, committees that were not subject to Proposition 34's contribution limits and ensuring the closing of Proposition 34 committees with no debt.²

Included within the termination regulation was a provision that allowed for a committee to seek from the Executive Director an extension of time within which to terminate the committee. Because the set December 31, 2002, deadline applied to a minimum of 234 pre-January 1, 2001, committees, the Executive Director received a large number of requests within the last few months of 2002 for extensions of time to terminate committees. Several situations arose within this context that highlighted the need for a more precisely-defined procedure for handling those requests for extensions, which resulted in this proposed amendment.

Background

Requests for extensions of time to terminate committees are submitted to the Executive Director pursuant to regulation 18404.1(f). Denial by the Executive Director may be appealed to the Chairman pursuant to the regulation.

¹ Initially, two regulations were adopted. Emergency regulation 18404.2 addressed the termination of pre-January 1, 2001, committees. Regulation 18404.1 dealt with termination of the 2001 and post-2001 committees. Eventually, for ease of reference and economy of space, regulation 18404.2 was repealed and readopted as part of regulation 18404.1, thereby creating only one regulation, which then encompassed all of the termination requirements.

² Proposition 34 committees are precluded from raising funds after an election if they have no debt arising from the election. (Govt. Code § 85316; Reg. 18531.6.)

Problems with existing procedures were identified as described below:

Issue 1 (Deadlines for Submission of Requests for Extension). The existing regulation provides that a request for extension may be submitted no later than 30 days prior to the due date for the committee's termination. In one case, the request for extension was submitted less than 30 days prior to the due date for the committee's termination. The Executive Director waived the defect and acted on the request, denying the request. The committee then appealed the request to the Chairman, but because of the timing problem caused by the committee's tardy submission of its initial request, the Chairman was left with only a day or two to consider the request before the committee's termination deadline. The Chairman had insufficient time to adequately review the request.

Issue 2 (Documentation). Most of the requests for extensions contained no information or documentation justifying an extension. This slowed the process and exacerbated the short timeline for appeals.

Issue 3 (Chairman's Time to Review Appeal). The existing regulation provides no time limit within which the Executive Director is required to act, raising additional timing issues regarding the Chairman's review of any subsequent appeal, in the event the Executive Director did not act in a timely fashion.

Issue 4 (Filing Required Campaign Statements). In one case where a committee submitted a request for extension to the Executive Director, staff discovered that the committee had neglected to file its semi-annual statements for the previous four years. The factors listed in the existing regulation to be considered by the Executive Director in granting or denying the request do not include whether committees have filed all required campaign statements as a factor the Executive Director may consider.

These issues may be addressed by implementing a more definite and precise procedure for seeking extensions from the Executive Director and the Chairman, and for the Executive Director and the Chairman to employ in addressing such requests.

The Proposed Amendments To Regulation 18404.1

The proposed amendments to regulation 18404.1 begin at subdivision (f) and would first move the deadline for a candidate-controlled committee to file its request for an extension from no later than 30 days prior to the original due date for termination, to 45 or 60 days, whichever option the Commission selects. This proposed amendment arises out of *Issues 1 and 3 (Deadlines for Submission of Requests for Extension and Chairman's Time to Review Appeal)*. The need to lengthen the time for a committee to file its request for an extension prior to its termination due date arises from the changes to the procedures to be followed by the Executive Director, and in the event of an appeal. This change is necessary to provide the Executive Director sufficient time to act, the committee adequate time to submit any appeal, and the Chairman enough time to review and act on the appeal.

To address the problem cited in *Issue 2 (Documentation)*, the proposed amendments also add a requirement that a request for an extension of time to terminate include evidence supporting any of the factors upon which the committee is basing its request for an extension. Bank records would suffice to fulfill this requirement where a campaign statement was not available. Also included is an option that would provide for automatic denial of any request for extension submitted later than the designated deadline, but would also allow the Executive Director to waive the denial upon a showing of good cause. Because of the tight timelines within which each step of the review process must be completed, this option also provides that the Executive Director may, within his or her discretion, reduce the notice period to the committee requesting the extension regarding its deadline to appeal to the Chairman.³ This option addresses the specific situation explained in *Issue 1 (Deadlines for Submission of Requests for Extension)*.

The primary change incorporated within the proposed amendment to subdivision (f) of regulation 18404.1 is that the Executive Director is given a specific time limit within which he or she must act after receiving the request for extension, and particular information that must be conveyed to the committee submitting the request for extension in any letter notifying the committee that its request has been denied, thereby addressing *Issue 3 (Chairman's Time to Review Appeal)*.

The proposed amendment addresses *Issue 4 (Filing Required Campaign Statements)* by making the factors to be considered by the Executive Director in granting or denying a request for extension less subjective, and by requiring that the committee have filed all required campaign statements.

The language providing for an appeal of the Executive Director's decision to the Chairman has been removed from subdivision (f) and placed in subdivision (g) of the proposed amended regulation, which also required relettering the former subdivision (g) to subdivision (h). The new subdivision (g) requires that the Executive Director notify any committee whose request for extension has been denied of the deadline by which they may appeal that denial to the Chairman. The deadline shall be no less than 10 days after transmittal of the notification of the denial of the request for extension. Subdivision (g) includes requirements for an appeal, including an option as to whether the appeal should be submitted to the Chairman by means that would ensure delivery no later than the next business day. These proposed amendments address the timing issues explained in *Issue 1 (Deadlines for Submission of Requests for Extension)*.

³The Decision Points will be addressed more fully below.

Decision Points and Recommendations⁴

Decision 1 – Timing for Submission of Requests for Extension

Decision 1 relates to whether the deadline for submitting a request for an extension of time to terminate a committee should be changed from 30 days to 45 days or 60 days. Examining the timelines within the regulation, 45 days is sufficient to allow for the Executive Director's 15 days to act, for a 10-day deadline (plus 5 days, if the notification is mailed, 2 days if notification is faxed, pursuant to Code of Civil Procedure § 1013). Assuming the Commission adopts Decision 3 at subdivision (g)(1) related to the requirement of filing the appeal in person, by fax, by overnight mail, or by certified mail, the Chairman would have 10-12 days to consider any appeal.

It should also be noted that changing the deadlines in subdivision (f) does not require changing the deadline in subdivision (e), in which the committee is required to give notice of its impending termination to its creditors. The notice given in subdivision (e) will simply notify creditors of the earliest possible date upon which the committee might terminate, in the event any extension request is not granted. It is appropriate that this deadline remain at 60 days to allow creditors sufficient time to take whatever action they deem necessary prior to the committee's termination.

Staff Recommendation: Staff recommends that the Commission select 45 days as the deadline.

Decision 2 – Late-Filed Requests for Extension

This provision would make a request submitted after the deadline (either 45 days or 60 days, depending on the Commission's selection in Decision 1) automatically denied. However, it would provide the Executive Director with discretion to waive the automatic denial upon a showing of good cause. The provision also expressly provides that the appeal provisions of subdivision (g) are not applicable to an automatic denial. This is because an automatic denial has not been subjected to the Executive Director's review of the merits of the request for extension. The appeal process set forth in subdivision (g) is a review of the Executive Director's decision on the merits. Therefore, because there has been no decision on the merits, subdivision (g) is not triggered in the event of an automatic denial. Late-filed requests would also not be subject to the appeal procedure to the Chairman. In cases where the request for extension is filed very late and the Executive Director finds good cause for waiver of the automatic denial, there may not be sufficient time for the request to wend its way through the review process and still provide the Chairman with the time necessary to perform a thorough and thoughtful review of an appeal. Indeed, there may be circumstances where there is insufficient time to even process an appeal prior to the time for the committee to terminate. For example, consider the committee that files its request for termination just 14 days prior to its termination date. The Executive Director finds good cause for the late filing of the request and grants a waiver of the automatic denial of the request. However, good cause for a late-filed request is a different thing from good cause for an extension of time to terminate a committee,

⁴ There is a clean copy of the regulation attached for your convenience, which is formatted as though all of the staff recommendations had been adopted by the Commission.

and the Executive Director denies the request for an extension. Even acting expeditiously, the Executive Director might act in 7-10 days, leaving only 4-7 days before the committee is required to terminate. This is simply insufficient time to process an appeal to the Chairman. Therefore, the loss of the right to an appeal must be a necessary consequence of filing the initial request after the deadline.

The proposed amendment also requires the Executive Director to notify the committee as to whether its request has been automatically denied or whether a waiver has been granted.

Staff Recommendation: Staff recommends adopting this provision. The deadline for filing a request for extension should be meaningful, and the procedures put forth in these proposed amendments make the deadlines even more important. But, staff recognizes that there are often good reasons for missing a deadline and believes that the Executive Director should have the discretion to grant a waiver when there is good cause for doing so. However, because the timelines of the review procedure will be impacted by any late filing of requests for extension, staff feels that it is appropriate that a committee filing a late request forfeit the right to appeal to the Chairman, thus minimizing the impact of its tardiness on the Commission, even if the automatic denial is waived by the Executive Director.

Decision 3 – Method of Submission of Appeal to Commission Offices (Sufficient Time for Review by Chairman)

This Decision Point deals with whether committees appealing the Executive Director's denial of a request for extension to the Chairman should be required to submit their appeals to the Commission offices either in person, by fax, by overnight mail, or by certified mail. The purpose of this provision is twofold: (1) to permit the Chairman sufficient time for review, given the tight timelines of the process of reviewing requests for extensions, as outlined under Decision 1; and (2) to provide a means of ensuring receipt of appeals by the Commission office, and documentation of receipt. As discussed above, there have been several occasions on which appeals have been submitted to the Chairman following denial of requests for extensions by the Executive Director, where the Chairman had only a few days to review the merits of the appeal. There have also been occasions where committees have stated that they have submitted appeals, but those appeals have never been received by the Commission. This provision is one designed to help eliminate those problems. However, it must also be noted that a committee that submitted its appeal by regular mail, but in sufficient time that it was received at the Commission office on or prior to the deadline set by the Executive Director for the submission of its appeal, would not be in compliance with the requirements of this regulation, if Decision 3 is adopted.

Staff Recommendation: Staff recommends that this provision be adopted.